

SECOND REGULAR SESSION

SENATE BILL NO. 1167

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Read 1st time January 27, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4288S.01I

AN ACT

To repeal section 557.036, RSMo, and to enact in lieu thereof one new section relating to the role of court and jury in sentencing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 557.036, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 557.036, to read as follows:

557.036. 1. Upon a finding of guilt upon verdict or plea, the court shall decide the extent or duration of sentence or other disposition to be imposed under all the circumstances, having regard to the nature and circumstances of the offense and the history and character of the defendant and render judgment accordingly.

2. [Where an offense] **If a class A or B felony** is submitted to the jury, the trial shall proceed in two stages. At the first stage, the jury shall decide only whether the defendant is guilty or not guilty of [any] **each** submitted offense. The issue of punishment shall not be submitted to the jury at the first stage.

3. If the jury at the first stage of a trial finds the defendant guilty of [the] a submitted **class A or B** offense, the second stage of the trial shall proceed. The issue at the second stage of the trial shall be the punishment to be assessed and declared **for each crime of which the defendant has been found guilty in the first stage regardless of classification**. Evidence supporting or mitigating punishment may be presented. Such evidence may include, within the discretion of the court, evidence concerning the impact of the crime upon the victim, the victim's family and others, the nature and circumstances of the offense, and the history and character of the defendant. Rebuttal and surrebuttal evidence may be presented. **Discovery as to evidence that may be presented in the second stage shall be completed prior to the beginning of the first stage of the trial.** The state shall be the first to proceed **in the second stage**. [The court shall instruct

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

the jury as to the range of punishment authorized by statute for each submitted offense.] The attorneys [may] **shall** argue the issue of punishment to the jury[, and] **within the range of punishment authorized by statute for each submitted offense and also may argue to the jury as to the recommended sentence options and the aggravating and mitigating factors for each offense, as promulgated by the sentencing advisory commission under subdivision (5) of subsection 6 of section 558.019, RSMo. For each offense, the court shall instruct the jury as to the range of punishment and the recommended sentence options and the aggravated and mitigating factors as promulgated by the sentencing advisory commission if the defendant timely submits to the court a correct instruction containing such information.** The state shall have the right to open and close the argument. The jury shall assess and declare the punishment as authorized by statute **for each crime for which the jury has found the defendant guilty in the first stage.**

4. A second stage of the trial shall not proceed and the court, and not the jury, shall assess punishment **unless the defendant requests in writing within thirty days following arraignment that the jury assess punishment. A second stage of the trial shall not proceed and the court, and not the jury, shall assess punishment if:**

(1) The defendant, **at any time following a request for jury determination of punishment but prior to the second stage of the trial,** requests in writing, [prior to voir dire,] that the court assess the punishment in case of a finding of guilt; or

(2) The state pleads and proves the defendant is a prior offender, persistent offender, dangerous offender, or persistent misdemeanor offender as defined in section 558.016, RSMo, a persistent sexual offender as defined in section 558.018, RSMo, or a predatory sexual offender as defined in section 558.018, RSMo;

(3) The defendant is not found guilty of a class A or B felony.

If the jury cannot agree on the punishment to be assessed, the court shall proceed as provided in subsection 1 of this section. If, after due deliberation by the jury, the court finds the jury cannot agree on punishment, then the court may instruct the jury that if it cannot agree on punishment that the court will assess punishment.

5. If the jury returns a verdict of guilty in the first stage and declares a term of imprisonment in the second stage, the court shall proceed as provided in subsection 1 of this section except that any term of imprisonment imposed cannot exceed the term declared by the jury unless the term declared by the jury is less than the authorized lowest term for the offense, in which event the court cannot impose a term of imprisonment greater than the lowest term provided for the offense.

6. If the defendant is found to be a prior offender, persistent offender, dangerous offender or persistent misdemeanor offender as defined in section 558.016, RSMo:

(1) If he has been found guilty of an offense, the court shall proceed as provided in

section 558.016, RSMo; or

(2) If he has been found guilty of a class A felony, the court may impose any sentence authorized for the class A felony.

7. The court shall not seek an advisory verdict from the jury in cases of prior offenders, persistent offenders, dangerous offenders, persistent sexual offenders or predatory sexual offenders; if an advisory verdict is rendered, the court shall not deem it advisory, but shall consider it as mere surplusage.

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